

Untitled

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition by the Massachusetts Association of Information)
and Referral Services and the Council of Massachusetts)
United Ways, acting in partnership as the Mass 211 Task) D.T.E. 99-71
Force, requesting approval by the Department for the)
assignment of the telephone dialing code "211" to the)
Task Force for use as a statewide community information)
and referral service.)

HEARING OFFICER RULING GRANTING

THE LATE-FILED PETITION TO INTERVENE BY

CELLCO PARTNERSHIP D/B/A BELL ATLANTIC MOBILE

I. BACKGROUND

On May 26, 1999, the Massachusetts Associations of Information and Referral Service and the Council of Massachusetts United Ways acting in partnership as the Mass 211 Task Force ("Task Force") filed with the Department of Telecommunications and Energy ("Department") a request for the assignment to the Task Force of the telephone dialing code "211" within the Commonwealth of Massachusetts. On September 10, 1999, the Department issued a notice of public hearing and procedural conference in this docket which set a September 24, 1999 deadline for the filing of petitions to intervene. On September 30, 1999, the Department held a public hearing and procedural conference in this docket. On October 27, 1999, the Department issued the latest procedural schedule in this docket. On November 23, 1999, Cellco Partnership d/b/a Bell Atlantic Mobile ("BAM") filed an untimely petition to intervene ("Petition") as a party in this docket. The Department received no responses to this Petition.

II. LATE-FILED PETITION TO INTERVENE

A. Standard of Review

The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. §1.03(1)(b); see also G.L. c. 30A, § 10. In interpreting this standard, the Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. *Attorney General v. Department of Public Utilities*, 390 Mass. 208, 216 (1983); *Boston Edison Company v. Department of Public Utilities*, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad but not unlimited discretion), cert. denied, 439 U.S. 921 (1978); see also *Robinson v. Department of Public Utilities*, 835 F. 2d 19 (1st Cir. 1987). The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); *Boston Edison*, 375 Mass. at 45. A petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant limited participation. *Boston Edison*, 375 Mass. at 45. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings (*id.*).

In ruling on late-filed petitions to intervene, or otherwise participate in its proceedings, the Department takes into account a number of requirements and factors in its analysis. First, the Department considers whether a petitioner has demonstrated good cause for late-filing. See 220 C.M.R. § 1.01(4). While "good cause" may not be readily susceptible of precise definition, the proponent of a waiver must make a convincing showing of good cause and may not reserve such a showing for a later appeal of the Hearing Officer's ruling. See *Bay State Gas Company*,

D.P.U. 95-52, at 2 Interlocutory Order (July 21, 1995). Administrative efficiency requires that a proponent of a waiver state all available grounds at the time the ruling is requested. If the Department finds that there is good cause and that the petitioner is substantially and specifically affected, then the Department balances the extent of participation against the need to conduct a proceeding in a complete, efficient and orderly fashion. When balancing, the Department has considered: (1) the extent of the delay, (2) the effect of the late participation on the ongoing proceeding, and (3) the explanation for the tardiness. *Western Massachusetts Electric Company*, D.P.U. 92-8C-A at 5 (1993); *NYNEX*, D.P.U. 94-50 at 3 (1994).

B. Position of the Parties

BAM states that it is a wireless telecommunications carrier operating under the jurisdiction of the Federal Communications Commission (Petition at 1). BAM indicates that it provides wireless telecommunications service to cities and towns throughout the Commonwealth (*id.*). BAM asserts that it is specifically and substantially affected by the technical and policy issues to be considered in this case since the Department is considering whether to require wireless carriers to provide abbreviated 211 dialing (*id.* at 1-2). BAM notes that it participated in the

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Connecticut proceedings relating to 211 and indicates that it is uniquely equipped to provide information to the Department regarding policy, technical, and federal regulatory issues under consideration in this docket (id. at 2).

BAM claims that it has good cause for its late-filed petition to intervene since it only recently became aware, with the filing of the Petitioner's direct case on November 4, 1999, that wireless carriers may be requested to provide access to 211 dialing following resolution of technical issues (id. at 3). If its petition to intervene is granted, BAM states that it seeks to participate for the purposes of monitoring developments in this docket, participating in hearings, and submitting comments and/or briefs, as appropriate. The Department received no comments to BAM's Petition to Intervene Late.

C. Analysis and Findings

First, based upon the Task Force's indication that it is prepared to accept the Department's exemption of wireless telecommunication carriers until technological issues have been resolved⁽¹⁾, it appears that the Task Force does expect the Department to consider requiring wireless telecommunications carriers such as BAM to provide 211 referral service at some point in the future.⁽²⁾ Thus, the Hearing Officer finds that BAM is substantially and specifically affected by this proceeding.

Second, in its May 26, 1999 filing with the Department, it was not clear whether the Task Force intended to cover wireless telecommunications carriers in its request for assignment of the abbreviated code 211 to the Task Force for use as a community informal and referral service. The Task Force's filing of its direct case was the first indication that the Task Force intends to include wireless telecommunications carriers in its petition for assignment of 211. Since BAM's late-filed petition to intervene was filed with the Department shortly after the Task Force filed its direct testimony, the Hearing Officer finds that BAM has made a convincing showing of good cause for the late-filed Petition in this docket.

Last, in balancing the competing interests of BAM's need to participate against the Department's need to conduct a proceeding in a complete, efficient and orderly fashion, the Hearing Officer finds that BAM's delay in filing the petition to intervene will not cause undue prejudice to the other parties or delay this proceeding so long as BAM adheres to the procedural schedule. BAM states that it has reviewed the procedural schedule and agrees to abide by the schedule established in this case. Accordingly, the Hearing Officer grants BAM's Petition to intervene with full participation rights. BAM shall abide by the procedural schedules set forth and any subsequent revisions and shall not delay these proceedings.

III. RULING

Accordingly, after due consideration, the Hearing Officer hereby grants the Late-Filed Petition to Intervene filed by Celco partnership d/b/a Bell Atlantic Mobile.

Under the provision of 220 C.M.R. § 1.06(6)(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by December 6, 1999, at 5:00 p.m. A copy of this Ruling must accompany any appeal. Any response to any appeal must be filed by December 9, 1999, at 5:00 p.m.

Date Tina W. Chin, Hearing Officer

1. See direct testimony of Jean Strock, Sandra Courtney and Paul Mina, at 2 and 9.
2. See direct testimony of Melanie Lowenstein and Carol MacElwee, at 2.